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*Counsel for Landlord, Pinnacle Hills, LLC, and  
 Managing Agent Brookfield Properties Retail, Inc.*

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEW JERSEY**

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In re:	: Chapter 11
BED BATH & BEYOND, INC., et al.,	: Case No. 23-13359 (VFP)
	:
Debtors.	: (Jointly Administered)
	:
	:
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**MOTION FOR ENTRY OF AN ORDER AUTHORIZING PINNACLE HILLS, LLC  
 TO FILE UNDER SEAL ITS UNREDACTED LEASE  
WITH TENANT HOBBY LOBBY STORES, INC.**

Landlord Pinnacle Hills, LLC and managing agent Brookfield Properties Retail, Inc. (together, “Landlord”) as landlord to debtor Bed Bath & Beyond, Inc. with respect to retail premises located at the Pinnacle Hills Power Center in Rogers, Arkansas (the “Premises”), hereby submits this motion (the “Seal Motion”) for entry of an order authorizing Landlord to file under seal the *Lease Dated January 5, 2021, between Pinnacle Hills, LLC, as landlord, and*

*Hobby Lobby Stores, Inc. (“Hobby Lobby”) as Tenant (the “Hobby Lobby Lease”).* In support of the Seal Motion, Landlord respectfully represents:

### **JURISDICTION**

1. This Court has jurisdiction to consider the Seal Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

2. On April 23, 2023, the above-captioned Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

3. No trustee has been appointed and Debtors are currently operating their businesses as debtors-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code. Debtors' Chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

4. On July 12, 2023, Landlord filed its objection to the Debtors’ assumption and assignment of the lease for the Premises (the “Assumption Objection”).<sup>1</sup>

5. The Assumption Objection references the Hobby Lobby Lease, and provides that the Debtors have failed to establish that their proposed assignee will comply with the use and exclusivity provisions of the Hobby Lobby Lease.

### **RELIEF REQUESTED**

6. By this Seal Motion, Landlord seeks entry of the proposed order, attached hereto as Exhibit A (the “Proposed Order”) (i) authorizing Landlord to file an unredacted copy of the Hobby Lobby Lease under seal; (ii) granting the Landlord leave to redact confidential

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<sup>1</sup> Docket No. 1323.

portions of the Hobby Lobby Lease and (iii) ordering that the unredacted version of the Hobby Lobby Lease shall remain confidential and not be made available to anyone other than the Court.

**CAUSE EXISTS TO FILE THE HOBBY LOBBY LEASE UNDER SEAL**

7. Pursuant to Section 107(b) of the Bankruptcy Code:

On the request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may ... protect an entity with respect to a trade secret or confidential research, development, or commercial information....<sup>2</sup>

8. Bankruptcy Rule 9018 explains the process by which a party-in-interest may seek relief under Bankruptcy Code Section 107(b) as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....<sup>3</sup>

9. Landlord submits that the information contained in the Hobby Lobby Lease falls within the scope of information that the Court may protect pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which, if disclosed, would result in "an unfair advantage to competitors."<sup>4</sup> Section 107(b) is "designed to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury."<sup>5</sup>

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<sup>2</sup> 11. U.S.C. § 107(b).

<sup>3</sup> Fed. R. Bankr. P. 9018. *See also* Local Bankr. R. 5005-5.

<sup>4</sup> *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *Video Software Dealers Ass'n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)).

<sup>5</sup> *Id.*

10. Michaels Stores, Inc., the proposed assignee, is a direct competitor of Hobby Lobby and the confidential information contained in the Hobby Lobby Lease consists of financial and business terms, disclosure of which may be detrimental to Hobby Lobby's business. Accordingly, Landlord requests entry of an order authorizing it to redact confidential information included in the Hobby Lobby Lease prior to filing it with the Court.

**WHEREFORE** Landlord respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: July 17, 2023

Respectfully submitted,

/s/ Robert L. LeHane

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